* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on February 22,2007
Delivered on March 05,2007

\+ CRL.REV.(P) 877/2005

GURCHARAN SINGH ..... PETITIONER
Through: Mr. K.B. Andley, Sr. Advocate with
Mr. M.L. Yadav & Mr. K.K. Singh, Advocates.

VERSUS

STATE THROUGH THE MCD ..... Respondent
Through: Mr. Gaurang Kanth & Mr. Daleep Kumar
Dhayani, Advocates for MCD.
Ms. Richa Kapur for the State.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr.Justice S.Ravindra Bhat:

1. In this revision proceeding, the petitioner has impugned the judgment and order of the Additional Sessions Judge, affirming the conviction and sentence recorded by the Metropolitan Magistrate (hereafter "the trial court") holding him guilty of offences under Sections 332 and 461, Delhi Municipal Corporation Act, 1957 (hereafter "the Act".

2. The complainant, Municipal Corporation of Delhi, (hereafter called "MCD") alleged that the petitioner was found raising unauthorized construction in the rear portion

of the first floor, consisting of two halls and passage in property No. 1384-86, Nicholson Road, (hereafter "the premises") without its permission. Notice was given; the petitioner claimed to be not guilty, and was sent for trial.

3. The accused's defence was that the building became dangerous. The property in question was visited by Junior Engineer (JE), Shri Avinash Kumar. He was examined by the complainant as PW-1. He stated that on 11.1.1991, while he was assigned to work as J.E. in Civil Lone Zone, at 11 am, he inspected the property No.1384-86 Nicholson Road Kashmiri Gate, Delhi. The accused-petitioner was found present at site; he was raising unauthorized construction in the rear portion of the first floor consisting of two halls and passage. Despite demand for permission to raise such construction, the petitioner failed to show the same. It was also alleged that the petitioner was supervising the construction. PW-1 prepared the FIR. Orders were issued by the Zonal Engineer (Z.E) for issuance of Show cause notice. Prosecution report is Ex.PW-1/A. He also prepared the rough sketch encircled red on the prosecution report. It was stated that the petitioner disclosed that he was the owner of the property in question.

4. PW-3, Arun Kumar was the Z.E(B). He corroborated the version of PW-1. He issued orders for issuance of the notice against the accused and signed them. The First Information Report (FIR) was put up before him; Show Cause Notice was served through pasting as the petitioner allegedly refused to accept the same. No reply to the notice was received. Thereafter demolition order were prepared and again that notice was not accepted by owner/builder and was served through pasting. Demolition action was not taken due to unavailability of police force. He recommended the prosecution of the

accused on the report of JE(B). Sh. D.R. Tamta further recommended the same to the Addl.Commissioner. He has identified the writing and signatures of Mr. D.T. Tamta and Sh. R.K. Singh Deputy Commissioner. PW2, brought the unauthorized construction file bearing No.312/B/UC/CLZ/90 dated 1.1.1991 and produced the original documents of the exhibits. He produced the Notification.

5. The petitioner contended that building was dangerous, an old one, about 125 years old. Yet he was unable to prove both the contentions, as neither document was produced on record that building was old one or in dangerous condition and also was declared dangerous by the building department of MCD. The trial Court concluded that from the cross-examination of PW1, the fact has been confirmed by JE(B) that unauthorized construction was noticed on the both sides of passage of first floor and roof of room were being supported by girders. The Court also held that according to cross-examination of PW3, building material was lying there. The Court held that no material about the premises being declared dangerous existed on the file.

6. The petitioner had stated that earlier he was acquitted by the Metropolitan magistrate in 1996 in respect of the same property. The Court held that the judgment had no bearing on the present case. The testimony of the witnesses were unrebutted and went unchallenged. Both PW2 and PW4 corroborated each other. The Court relied upon their testimonies of the witnesses, and held that the petitioner was guilty of violating the provisions he was charged with. On these findings, the petitioner was held guilty, and convicted. The Court relied on the statements of PW1 and PW3 that the respondent was

present at the site at the time of the inspection on 30th December, 1991. They had deposed that the construction was carried out at the instance of the Petitioner who was present at the site.

7. The Court, after considering that the petitioner accused had to await for the final judgment for 11 years, and noting his age at that time as being about 57 yrs, and also that he was not carrying on business due to his bad health, declined to admit the petitioner on probation. Instead, the Court imposed a sentence of six months S.I with fine of Rs.5000/-. In default one month S.I is imposed upon the convict for alleged offence. Fine deposited. These findings were challenged; the Additional Sessions Judge rejected the appeal. Therefore, the present petition.

8. The counsel for the petitioner reiterated the contention regarding innocence of the petitioner, and that there was no material to support the allegation of unauthorized construction. However, the main thrust of the argument pertained to what was termed as "excessive" and disproportionate punishment of six months simple imprisonment, awarded in the case.

9. Counsel urged that the Court ought to consider granting probation, or, reducing the sentence to the period already undergone by the petitioner. He further stated that the events took place 15 years ago, and the ill effects of a prolonged trial could not be lost sight of. He submitted that the petitioner is aged about 63 years, and has not indulged in any such activity, in the interregnum period.

10. The jurisdiction of the High Court, in cases like the present one, where findings about the guilt have been rendered concurrently, are extremely restricted. Unless the record discloses palpable miscarriage of justice, or that the findings were not based on any acceptable materials, the court cannot intervene .In this case, the crucial official witnesses admittedly spoke about the unauthorized construction, its nature, the petitioner's presence, the lack of permission or sanction and his failure to answer the demolition notice. Thus, the basic ingredients of the offence were made out. To that extent, the findings of the Courts below cannot be faulted.

11. The next question, however, is the sentence that was imposed upon the petitioner. A look at Section 461 read with the Twelfth schedule to the Act reveals that the offence is punishable with fine, to the extent of Rs.5,000/- and imprisonment, to a maximum period of six months. The petitioner has been inflicted with these punishments.

12. The conviction of the petitioner cannot be termed as erroneous. However, the Court, in my opinion cannot lose sight of the debilitating effect of a prolonged and delayed trial, upon the petitioner. This aspect has to assume some importance, because the offender, the nature of the offence, and the propensity to crime, in such cases, are relevant factors to be kept in mind, while engaging in the sentencing process. Modern trends in penology point to adoption of a reformative oriented approach by the Court; in India, circumstantial flexibility has been injected by introduction of plea bargaining in respect of lesser offences. In this case, an added dimension or factor is that the petitioner

has aged further, and is now 62 years of age. He has already undergone imprisonment of about 15 days.

13. Keeping in mind all the above factors, I am of the considered opinion that in addition to the period undergone, the petitioner should serve the sentence, to the extent of a further one month. In the peculiar facts of the case, the petitioner shall deposit Rs.25,000/- as costs for these proceedings; they shall be paid to the Delhi Legal Service Authority within four weeks, and a compliance affidavit in that regard shall be filed. Save the modification of sentence, the judgments of the courts below are affirmed. The petition is allowed in these terms.

Dasti.

March 05, 2007. (S. RAVINDRA BHAT)
JUDGE